**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.815 OF 2006**

Shri Maruti Narayan Magdum & Ors. ....Appellants

V/s.

Bajirao Krishna Mithari & Anr. ....Respondents

Mr.Amit Borkar for Appellants.
Mr.R.P. Walvekar for Respondent No.1 & 2.

**CORAM : V.M. KANADE, J.**

**DATED : 16th JULY, 2007.**

**P.C:-**

1. Heard learned counsel for the Appellants and learned counsel for Respondent No.1 & 2.

2. The Appellants take exception to the order passed by the 2nd Joint Civil Judge, Junior Division, Kolhapur, dated 08/01/2003 whereby suit filed by the Appellants/Orig.Plaintiffs was dismissed and this order has been confirmed by 3rd Additional District Judge, Kolhapur in Regular Civil Suit No.360/2001.

3. Appellants herein had filed suit for declaration that they are the owners of the suit land and also sought consequential relief for perpetual injunction restraining the Respondents from disturbing their possession.

The Trial Court dismissed the suit and this order has been confirmed by the lower Appellate Court.

4. Learned counsel for the Appellants submitted that defendants had relied on sale deed which was executed in favour of their father in the year 1933. He submitted that the Trial Court accepted said evidence and held that defendants were the owners of the suit premises. However, Appellate Court, according to the learned counsel for the Appellants, did not accept the sale deed and to that extent recorded finding of fact. He submits that having done that, the Lower Court Appellate Court ought to have relied on the documentary evidence adduced by the Appellants which shows that they were the owners of the land in question on the basis of documents which were of the year 1975. He submits that lower Appellate Court discarded this evidence as there were no documents prior to 1975 in favour of Appellants to show that they were the owners of the said land in question. He submits that the lower Appellate Court, therefore, had erred in finding of record and not appreciating the evidence on record.

5. It is not possible to accept the submissions made by the learned counsel for the Appellants. I have perused the order passed by

the lower Appellate Court recording finding of fact that there is no evidence on record which can conclusively establish that the Appellants were the owners of the suit land. Further after considering the oral and documentary evidence on record a finding is recorded that the Appellants are not in possession of the suit land. I do not see any reason to interfere with concurrent finding of fact given by the Lower Appellate Court. No substantial question of law is raised in this Second Appeal. Second Appeal is accordingly, dismissed.

**V.M. KANADE, J.**